IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1663 of 1983

For Approval and Signature:
HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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FULAJI K PUNJARA - Appellant(s)
Versus
VITHALBHAI P PATEL & 2 - Defendant(s)

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Appearance :
MR MAHESH BHAVSAR for Appellant,
NONE for Respondent Nos. 1 & 2.
MS HETVI SANCHETI ON BEHALF OF MR SV RAJU for Respondent No.3,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 20/06/2007

ORAL JUDGMENT

1. Mr.Mahesh Bhavsar, learned counsel for the appellant and Ms.Hetvi Sancheti, under the authority of Mr.S.V. Raju, learned counsel for the respondent No.3. None for the respondent Nos.1 and 2.

2. The appellant – original claimant, being aggrieved by the impugned Judgement and Award dtd.1/9/1982 passed by the Motor Accident Claims Tribunal (Auxi.), Sabarkantha at Himmatnagar in Motor Accident Claim Petition No.30 of 1980, is before this Court with a complaint that the learned tribunal was absolutely unjustified in rejecting the claim petition on untenable grounds.

3. The case of the present appellant – original claimant was that the claimant was engaged in the job of loading and unloading stones in a trolley bearing No.GRS-9219 attached with Tractor bearing No.GRA-9812. While the present claimant was sitting in the trolley as a labour, the respondent No.1 started driving the tractor at an excessive speed in rash and negligent manner which occasioned an accident and led to injuries to the claimant.

4. The driver stated before the tribunal that he was not driving the vehicle and the alleged owner stated before the tribunal that he was not the owner of the tractor. As the driver and owner were not accepting the facts, the Insurance Company, however, submitted that they were not liable to make any payment. As the parties had joined the issues, the learned tribunal allowed the parties to

lead evidence. The alleged driver and the alleged owner of the vehicle were examined, but, unfortunately, they were not cross-examined. It is also to be seen that the policy of the the offending tractor bearing No.GRA-9812 has not been produced on the record to prove that the present respondent No.2 was the owner of the tractor. If the statements of the respondent Nos.1 and 2 remained unchallenged and the policy of the tractor is not produced on the record, then it would not be possible for any Court to hold that the respondent No.1 was driving the tractor and the respondent No.2 was owning the said tractor.

5. After going through the entire evidence available on the record, I am unable to hold that the learned tribunal committed an illegality in dismissing the claim petition.
6. The appeal deserves to and is accordingly dismissed. Interim relief, if any, is vacated. No costs.

(R.S. GARG, J.)

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